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Supreme Court, U.S.
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In The

Supreme Court of the United States

DIANA MARQUEZ and HECTOR LEONEL MARQUEZ-RAMOS,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This case presents issues yet to be decided by this Court. During the prosecution of Petitioners for marijuana importation and distribution conspiracy offenses, the government seized evidence in Mexico using fraudulent warrants. This evidence was admitted at trial, over objection, not in violation of Petitioners' Fourth Amendment rights but, instead, in violation of their due process rights under the Fifth Amendment, violations which tainted their entire trial. Moreover, the offense of conspiracy to kill in a foreign country is likewise a case of first impression which begs for resolution by this Court, especially the district court's subject matter jurisdiction under the Sixth Amendment.

1. Whether the district court erred in admitting evidence seized in a foreign country and thereby denying Petitioners' their Fifth Amendment Due Process Rights.

2. Whether the evidence was legally sufficient to sustain Marquez-Ramos' conviction for Conspiracy to Kill in a Foreign Country and to thereby vest the district court with subject matter jurisdiction under the Sixth Amendment.

PARTIES TO THE PROCEEDING

Petitioners are Diana Marquez and Hector Marquez-Ramos, Defendants-Appellants below.

Respondent is the United States.

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OPINIONS BELOW

The opinion below is *United States v. Fernandez, et al.*, ___ F.3d ___ (5th Cir. 2009) (No. 07-50513). See App. at 1. Petitioners did not file a motion for panel rehearing and suggestions for rehearing *en banc*.

STATEMENT OF JURISDICTION

The court of appeals had jurisdiction under 28 U.S.C. §1291. This Court has certiorari jurisdiction under 28 U.S.C. §1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Amendment V

No person shall be held to answer to a capital, or otherwise infamous crime, unless presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

18 U.S.C. §956

Conspiracy to kill, kidnap, maim, or injure persons or damage property in a foreign country. Whoever, within the jurisdiction of the United States, conspires with one or more other persons, regardless of where such other person or persons are located, to commit at any place outside the United States an act that would constitute the offense of murder, kidnapping, or maiming if committed in the special maritime and territorial jurisdiction of the United States shall, if any of the conspirators commits an act within the jurisdiction of the United States to effect any object of the conspiracy, be punished as provided in subsection (a)(2).

STATEMENT OF THE CASE

The indictment in this case, and the counts which are pertinent to this Writ, alleged that Hector Marquez-Ramos ("Marquez-Ramos") and Diana Marquez ("Marquez") were co-conspirators in a large marijuana importation and distribution conspiracy headed by Mario Marquez. Mario Marquez (still a fugitive) was the husband to Diana Marquez and the brother to Hector Marquez-Ramos.[1] Marquez-Ramos was also charged with a Conspiracy to Kill in a Foreign Country. As previously noted, the government's allegations were that Mario Marquez was the head of a major drug enterprise that imported large quantities of marijuana, from Mexico into the United States. In early 2005, the Organization was "in turmoil," after increasingly frequent drug seizures, difficulties in transmitting drugs and money, and infiltration by the authorities. Marquez-Ramos, who allegedly was an "enforcer" for the Organization in the past, was dispatched, with another member of the group, to Detroit, the residence of Ricardo Sepulveda, the Organization's main agent in the Midwest.[2] The Organization had grown increasingly frustrated with Sepulveda over the preceding months, as he had refused orders to carry out a murder for hire and to

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[1] The facts recited herein are those stated in the 5th Circuit opinion; to which Petitioners do not adopt.

[2] The testimony of Sepulveda, who pled guilty and testified for the government at trial, is a major source of the information about the conspiracy to kill count.

pick up a large truckload of marijuana for distribution. He owed around a million dollars to the Organization. While in Detroit, Marquez-Ramos had Sepulveda show him where some lower level members of the Organization who were suspected of stealing from the group lived. Marquez-Ramos told Sepulveda that he planned to have them killed. While Marquez-Ramos was in Michigan, Sepulveda told him he wanted to quit the Organization.

After Marquez-Ramos left the Midwest, Sepulveda received a call from Mario Marquez asking him to go to Juarez, Mexico to "touch base" and smuggle cash back into Mexico. Sepulveda took his mother with him. They arrived in El Paso on February 13, 2005. When at a Marquez-controlled house in El Paso, Marquez-Ramos and another Organization member, Esaul Guerrero, packed bundles of cash into the door panels and console of Sepulveda's truck. Sepulveda and his mother that evening then crossed into Mexico.

On arrival at an Organization house in Juarez, Mexico known as the "yellow and green house," Sepulveda asked to be paid for the cash smuggling. Mario Marquez said he would have to wait for another Organization member to arrive. The next day, Sepulveda was once again told to wait another day. That night there was a cookout at the yellow and green house. Mario Marquez told Sepulveda that he was concerned that a member of the Organization in the Midwest, whom Sepulveda had brought into the Organization, had threatened to go to the authorities.

They also talked about Marquez-Ramos' trip to the Midwest. Sepulveda then told Mario, as he had earlier told Marquez-Ramos, that he wanted to "pull out" of the Organization.

The next morning, Sepulveda and his mother wanted to leave and return to the United States. Mario Marquez asked them to stay and have breakfast. Marquez-Ramos took them to a restaurant. When they returned to the yellow and green house, Sepulveda saw a man with a "wooden handle" standing outside. Later, when he, his mother, Marquez-Ramos, and others were inside the living room, yet another Organization member arrived and said he had been in a car accident. Sepulveda and Marquez-Ramos went outside to see what had happened, passing the putative accident victim and others on their way in. Marquez-Ramos then "rushed" back inside, and Sepulveda realized there was nothing wrong with the car. When he reentered the house, Sepulveda found his mother, Maria Elida Liuzza, laying on the floor. One man was on top of her with "an object in his hand," while another Organization member washed his hands in the kitchen. His mother was moaning, in pain, and out of breath.

Sepulveda immediately ran out of the house, pursued by some of the men. He apparently was helped by a motorist to reenter the United States. Once there, he went to the authorities. They taped a series of calls he made to Mario and Diana Marquez; both Marquezes repeatedly asked him where he was.

Another witness testified that Mario Marquez subsequently told him that Sepulveda's mother was murdered, and that Sepulveda had "escaped." Sepulveda also met with Mexican law enforcement agents, and prosecutors, in the presence of numerous law enforcement agents from the United States. According to Sepulveda, these authorities, in the presence of United States law enforcement agents, had him "change his story" so that they could obtain search warrants for the yellow/green house and "the castle." Evidence seized from the yellow/green house included blood stains on the carpet and personal items belonging to Marquez-Ramos. Evidence seized from "the castle" included 6 tons of marijuana, weapons, and ledger books linked to Marquez-Ramos through handwriting analysis testimony. Sepulveda signed a five (5) page statement which he claimed was completely false but was deliberately done so at the direction of the Mexican authorities and in the presence of U.S. agents. Sepulveda then identified numerous items seized by Mexican authorities (with assistance from United States agents) from "the castle" and the yellow/green house.

On cross-examination, it was discovered (for the first time) that Sepulveda's signature appeared five (5) times on a sworn statement prepared for Mexican law enforcement authorities, in the presence of United States federal agents (on February 15, 2005, at 1:40

p.m.), which was infested with lies and falsehoods.[3] According to Sepulveda, Claudia LNU, an attorney with the Mexican Government, told him, in the presence of United States Government agents, that the information which he related to the federal agents had to be "changed" in order for Mexican authorities to obtain search warrants for the "yellow/green house" and "the castle." Marquez-Ramos moved to exclude this evidence and for a mistrial, both requests being denied. Sepulveda claimed that ICE and DEA agents (who spoke Spanish) were present when this was occurring and did not protest. Prior to trial, Petitioners had stipulated to the introduction of evidence seized from the execution of these two (2) search warrants, issued by Mexican authorities, under the belief that the evidence seized from these two properties were not subject to Fourth Amendment protestations. As noted during the cross-examination of Sepulveda, it was discovered, for the first time, that the application presented by law enforcement officials for the search warrants contained blatantly false representations which were done intentionally. Even more distressing, and, which is germane to this Writ, was the fact (according to Sepulveda) that United States law enforcement officers were fully aware of these deliberate falsehoods, thereby participating in a "joint venture" to seize evidence knowing that it would be introduced at

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[3] Sepulveda claimed that the signatures were his but *he* did not sign the document (RR 201).

the trial of Petitioners. Moreover, United States law enforcement officials not only actively participated in the perjurious and false application being issued, but they participated in the searches conducted on the two (2) residences in Mexico. In the district court, upon discovery of this evidence (which the government did not disclose), Petitioners moved to exclude the evidence and for a mistrial, which the district court denied.[4] The district court also denied Marquez-Ramos' Rule 29(a) Motion for Judgment of Acquittal on the conspiracy to kill in a foreign country. The jury convicted both Petitioners of all counts in the indictment. Marquez is serving a three hundred-sixty (360) month sentence and Marquez-Ramos is serving a life imprisonment sentence.

On appeal, Petitioners asserted, *inter alia*, the same issues presented in this Writ of Certiorari. The court of appeals, in deciding not only whether the district court had jurisdiction, under the Sixth

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[4] Petitioners cited *United States v. Verdugo-Urquidez*, 494 U.S. 259 (1990) in support of their motions. In *Verdugo-Urquidez*, former Chief Justice Rehnquist succinctly noted that "whether evidence obtained from Respondent's Mexican residences should be excluded at trial in the United States is a remedial question separate from the existence *vel non* of the constitutional violation" 494 U.S. at 264. And although the Court held that the Fourth Amendment had no application to a place searched in Mexico, it did not preclude a Fifth Amendment challenge to the admissibility of such evidence if law enforcement officials, prior to the trial, impair the right to a fair trial. *Kastigar v. United States*, 406 U.S. 441, 91 S.Ct. 1653, 32 L.Ed.2d 212 (1972); *Verdugo-Urquidez*, at 264.

Amendment, to hear a case brought under 18 U.S.C. §956, but also the sufficiency of the evidence to sustain Marquez-Ramos' conviction, first focused on whether one of the conspirators was within the United States when he conspired to commit this murder offense. While recognizing that the Government's explanations were highly speculative, the court of appeals inexplicably held that there was "substantial evidence to show there was a plan to murder Sepulveda." The court then noted that one of the two alleged

> conspirators who was in El Paso, Esaul Guerrero, while not indicted for the murder in the final version of the indictment, was Mario Marquez's stepson and was indicted for drug activity with the Organization. Moreover, the court stated that co-conspirators need not be identified in the indictment. *United States v. Thomas*, 348 F.3d 78, 82-84 (5th Cir. 2003), and that jurors could have found that, while in El Paso, Marquez-Ramos did agree with Guerrero to kill Liuzza in Mexico, satisfying the element of the offense that the conspiracy be formed with someone in the country.

The court of appeals also surmised about whether there was sufficient evidence to have supported a conspiracy to kill Liuzza at all. That question was resolved by the Fifth Circuit by piling "inferences upon inferences" and finding that,

> given the evidence that Sepulveda owed Mario Marquez a large sum of money; the

> evidence regarding Marquez-Ramos' and the Organization's tendency towards violence and murder as management tools; and the eventual fate of Liuzza (and near-fate of Sepulveda), a reasonable jury could find that the invitation to Juarez was a ruse to kill Sepulveda.

Then, according to the court of appeals the jury could have inferred that plan would have "needed to include someone Sepulveda brought with him. There was evidence that Sepulveda had brought his mother on such trips in the past, so her arrival may not have been entirely unanticipated." At least it was "reasonable for jurors to conclude that the specific plan to kill Liuzza was not finalized, because it could not have been, until she arrived" in El Paso. Finally, the court of appeals opined that if Marquez-Ramos and Guerrero commenced their conspiracy to kill Liuzza when they saw her arrive with Sepulveda, and the packing of the cash into Sepulveda's vehicle in El Paso was an overt act in furtherance of the conspiracy. Any encouragement to Sepulveda and his mother to continue on to Juarez, any maintaining of the ruse by act or word, "would also have been overt acts."

With respect to Petitioners' Fifth Amendment due process claims, the court of appeals acknowledged the precedent set in the Fifth Circuit. *United States v. Tweel*, 550 F.2d 297 (5th Cir. 1977). The court of appeals, in discussing *Tweel*, recognized that "we found that due process was violated when an IRS agent committed a deliberate deception by giving a literally true but misleading answer to a question

designed to discover whether an investigation was being undertaken for criminal purposes." Noting that *Tweel* relied on a case which stated that an "affirmative misrepresentation" by an agent must be shown, by a clear and convincing standard of proof, in order to demonstrate that the government acted impermissibly; *Id.* (quoting *United States v. Prudden*, 424 F.2d 1021, 1033 (5th Cir. 1970)), the court nevertheless found that Petitioners had not made such a showing: "at best, [the] evidence was that they [U.S. agents] sat by while Mexican authorities induced a witness to make false witness for use within the Mexican judicial system."[5] The court of appeals then stated: "Substantive due process may forbid obtaining a conviction based on law enforcement conduct that 'shocks the conscience,' when the conduct is brutal and offensive to human dignity" and is among the most egregious official conduct. *Stokes v. Gann*, 498 F.3d 485 (5th Cir. 2007) (citation omitted). Even taking as true [Petitioners'] allegation that American law enforcement agents were aware that their Mexican counterparts were inducing a witness to lie in order to obtain a Mexican search warrant; that conduct does not sink to the required deaths.

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[5] The Fifth Circuit opinion failed to mention that the evidence in question was not being used in the Mexican judicial system, but instead in the United States' federal judicial system.

REASONS FOR GRANTING THE WRIT

1. Whether the district court erred in admitting evidence seized in a foreign country and thereby denying Petitioners' Fifth Amendment Due Process Rights.

The Due Process clause of the Fifth Amendment mandates that any violation in obtaining and admitting evidence in a criminal trial cannot be condoned. In *United States v. Verdugo-Urquidez*, 494 U.S. 259, 110 S.Ct. 1056, 108 L.Ed.2d 202 (1990), which involved an attempt by an alien to invoke the safeguards of the Fourth Amendment to searches conducted in a foreign country, former Chief Justice Rehnquist succinctly noted the following:

> "Before analyzing the scope of the Fourth Amendment, we think it is significant to note that it operates in a different manner than the Fifth Amendment, *which is not at issue in this case* . . . although conduct by law enforcement officials prior to trial may ultimately impair that right, a constitutional violation occurs only at trial. *Kastigar v. United States*, 406 U.S. 441, 453 (1972) . . . for purposes of this case, therefore, if there were a constitutional violation it occurred solely in Mexico. Whether evidence obtained from Respondent's residences should be excluded at trial in the United States is *a remedial question* separate from the existence *vel non* of the constitutional violation." (emphasis added) at 264.

Petitioner Diana Marquez (a United States citizen) and her brother-in-law, Petitioner Hector Marquez-Ramos (a resident alien) assert they enjoy certain constitutional rights, even if one is not a citizen. *Pyler v. Doe*, 457 U.S. 202, 211-12 (1982) (illegal aliens protected by Equal Protection Clause); *Kwong Hai Chew v. Colding*, 344 U.S. 590, 596 (1953) (resident alien is a "person" within the meaning of the Fifth Amendment); *Bridges v. Wixon*, 326 U.S. 135, 148 (1945) (resident aliens have First Amendment rights); *Russian Volunteer Fleet v. United States*, 282 U.S. 481 (1931) (Just Compensation Clause of Fifth Amendment); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896) (Fourteenth Amendment protects resident aliens); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (Fourteenth Amendment protects resident aliens). These cases establish that aliens receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country. See, e.g. *Pyler, supra*, 457 U.S. at 212 (The provisions of the Fourteenth Amendment "are universal in their application to all persons within the territorial jurisdiction. . . .") (quoting *Yick Wo, supra,* 118 U.S. at 369); *Kwong Hai Chew, supra*, 344 U.S. at 596, n.5 ("The Bill of Rights is a futile authority for the alien seeking admission for the first time to these shores. But *once an alien lawfully enters and resides in this country* he becomes invested with the rights guaranteed by the Constitution to all people within our borders.") (quoting *Bridges, supra*, 326 U.S. at 161 (concurring opinion) (emphasis added)). Clearly,

the core of Petitioners' concerns can be categorized as one of due process, regardless of whether they are couched in terms of the Fifth, Sixth, or Fourteenth Amendments. Some courts refer to the issue as one of due process or abuse of process, some as government deception, and still others as improper administration of justice. See, e.g. *United States v. Blocker*, 104 F.3d 720, 728 (5th Cir. 1997) ("government deception") *Securities and Exchange Commission v. ESM Government Securities, Inc.*, 645 F.2d 310, 315-16 (5th Cir. 1981) ("deliberate deception" and "abuse of process"); *United States v. Tweel*, *supra* ("deception by IRS agent was shocking"). Decency, security, and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means; to declare that the Government may commit crimes in order to secure the conviction of a private criminal; would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face.

This Court should not set aside such rights nor overlook government misconduct because of the ominous nature of the charges against Petitioners.

The evidence seized in Mexico was highly prejudicial to Petitioners and was admitted without Petitioners knowing that it had been obtained fraudulently, by deception and with government agents participating with Mexican authorities, in the due process violations. Once Petitioners discovered it, which was through the witness Sepulveda (who was the "next-to-last" government witness), they moved to exclude it (which was denied), filed a written motion to exclude it (which was denied), moved for a mistrial (which was denied), and moved for appropriate jury instructions (which were denied).

A new trial should be granted to Petitioners. Evidence seized from the yellow/green house and "the castle," both located in the Republic of Mexico, were *admitted at trial in violation of the due process clause of the Fifth Amendment, were material and prejudicial, and were instrumental in convicting Petitioners on each charged count in the indictment.* Both the equal protection and due process components of the Sixth Amendment assure that evidence obtained by unlawful government intrusion should be excluded at trial. The evidence obtained by Mexican officials, in conjunction with law enforcement agents of the United States, resulted in the improper manipulation of the American criminal justice administration and secured evidence against Petitioners which resulted

in their convictions. Bad faith on the part of the United States government agents was unequivocal.

FBI, DEA and ICE agents were *present* and *knew* that the Mexican authorities were obtaining warrants to search these residences based on intentional and deliberate falsehoods. They not only failed to object to this blatant deception, they condoned it, participated in the searches and the gathering of evidence, and then gave it to government prosecutors. Also, prosecutors did not disclose this information to Petitioners. *Due to these violations, Petitioners should be granted a new trial as to all counts.*

2. Whether the evidence was legally sufficient to sustain Marquez-Ramos' conviction for Conspiracy to Kill in a Foreign Country and to thereby vest the district court with subject matter jurisdiction under the Sixth Amendment.

Petitioner Marquez-Ramos was indicted and convicted of a conspiracy to kill in a foreign country. 18 U.S.C. §956 has four (4) essential elements which had to be proved beyond a reasonable doubt in order to sustain a conviction in this case: (1) that Marquez-Ramos and at least one other person made an agreement to willfully, deliberately, maliciously and with premeditation and malice kill Maria Elida Liuzza by choking her and beating her, as charged in the indictment; (2) that Marquez-Ramos knew the unlawful purpose of the agreement and joined in it willfully, that is, with the intent to further its

unlawful purpose; (3) that one of the conspirators, during the existence of the conspiracy, knowingly committed at least one overt act in order to accomplish some object or purpose of the conspiracy; and (4) that at least one of the conspirators was within the jurisdiction of the United States when the conspirators made the agreement to commit the crime of murder as charged in the indictment; *United States v. Wharton*, 320 F.2d 525 (5th Cir. 1982). As previously noted and likewise recited in the court of appeals' opinion, Ricardo Sepulveda claimed that while in Detroit, Michigan, he purportedly told Marquez-Ramos that he "wanted out" (at least temporarily) until these "problems stopped." Sepulveda claimed that Marquez-Ramos appeared "displeased," but conceded that the request was *not* communicated to Mario. Approximately one (1) week later, Mario called Sepulveda and asked him to come to El Paso in order to deliver money to Juarez and discuss the "problems" occurring in the "Midwest." After thinking it over, Sepulveda decided to go and even took his mother, Ms. Liuzza, with him. When they arrived in El Paso, they went to Mario's Whirlaway residence where his vehicle was loaded with money by Guerrero and Marquez-Ramos. Sepulveda, who did not detect any animosity, and his mother then went to the yellow/green house in Juarez where they were greeted by Mario. They went to eat dinner with Mario, Diana Marquez and their daughter and returned to spend the entire day of February 14, 2005, at the yellow/green house. At night, there was a cookout, drinking and smoking marijuana by some

individuals. Marquez-Ramos was never in Juarez nor at the yellow/green house on either February 13 or 14, 2005. On the evening of February 14, 2005, Sepulveda claimed he told Mario, *for the first time*, that he wanted "out" and to be paid for his services. Mario did not react angrily or argue with Sepulveda, only telling him he would be paid the following day. This would have been the first time that Mario *knew* of Sepulveda's intentions and, the first opportunity for a conspiracy to commit murder to have been hatched. Clearly, not a scintilla of evidence was presented, by the government, which established that Marquez-Ramos (who *may* have been in the United States that night as well as the following morning) was ever contacted by Mario and informed of the "plot." Not even circumstantial evidence of possible cellular telephone calls, between Mario and Marquez-Ramos (on 02/12/05-02/15/05), occurred and which could possibly have created an inference of a conspiratorial agreement. Marquez-Ramos, who was in route to the interior of Mexico on February 15, 2005, stopped at Mario's house in an effort to trade vehicles with him. He was asked by Mario to take Liuzza and Sepulveda to breakfast, which he did. No evidence was presented which demonstrated that "one of the conspirators was within the jurisdiction of the United States when the agreement was made." Even using mental gymnastics, the *only* alleged conspirator who was usually in the United States when the agreement could have been *possibly* made was Marquez-Ramos. However, he was in Michigan and not in the Western District of Texas. When Marquez-Ramos and

Guerrero allegedly loaded Sepulveda's car with money in El Paso, Texas, on February 13, 2005, they were in the United States. However, no evidence exists to establish that a conspiracy or agreement had been made to kill Ms. Liuzza. Most importantly, no one knew Ms. Liuzza was even coming to El Paso; and Pee Wee's (an indicted co-conspirator) and Mario's "smoking marijuana" with her on February 14, 2005, was an act in furtherance of committing her murder. Next, Marquez-Ramos, taking Ms. Liuzza and Sepulveda to breakfast certainly cannot be construed as willfully joining a conspiracy to commit murder. He would have had to have known of the unlawful purpose and then joined in it by taking Sepulveda and Ms. Liuzza to breakfast in order to "stall for time." *Not one of the conspirators* in this case, even when viewing the evidence in a light most favorable to the government, was within the jurisdiction of the United States and the Western District of Texas. This crucial element of §956, which is completely missing, mandates a reversal of Marquez-Ramos' conviction of Count Five.

CONCLUSION

WHEREUPON, PREMISES CONSIDERED, Petitioners pray that this Court grant their petition for writ of certiorari.

Respectfully submitted,

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IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 07-50513

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

HORACIO FERNANDEZ; DIANA MARQUEZ; HECTOR LEONEL MARQUEZ-RAMOS, also known as Hector Marquez

Defendants-Appellants

Appeals from the United States District Court for the Western District of Texas

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(Filed Feb. 11, 2009)

Before JONES, Chief Judge, and OWEN and SOUTHWICK, Circuit Judges.

LESLIE H. SOUTHWICK, Circuit Judge:

Three jointly tried defendants appeal their convictions and sentences relating to a major drug-trafficking conspiracy. We AFFIRM.

I. BACKGROUND

Horacio Fernandez, Diana Marquez, and Hector Leonel Marquez-Ramos were each convicted by a jury of multiple counts – some overlapping, others unique – resulting from their involvement in a marijuana importation conspiracy based in Juarez, Mexico and El Paso, Texas. Production and distribution networks extended considerably deeper into each country.

Taking the evidence in the light most favorable to the government, all were part of a group known as the Marquez Drug Trafficking Organization (the "Organization"), whose leader was Mario Marquez. While not a defendant, Mario played a central role in the relevant events. Hector Marquez-Ramos is Mario's brother; Diana Marquez was his wife; Horacio Fernandez was a long-time associate convicted of serving as the Organization's money-laundering expert.

Fernandez was charged solely with money-laundering counts. He was sentenced to two concurrent terms of 160 months' imprisonment. Diana Marquez was charged with money laundering and with drug distribution and importation. She was sentenced to multiple concurrent terms of imprisonment, the longest of which were for 360 months. Hector Marquez-Ramos was charged with multiple drug counts as well as the most serious offense, conspiracy to murder in a foreign country. He was sentenced to multiple terms of life imprisonment and one term of

40 years' imprisonment, all to run concurrently. We separately address the contentions of each defendant.

II. DISCUSSION

A. Hector [sic] *Fernandez*

1. a. Sufficiency of the Evidence on Money Laundering Counts

Fernandez argues that the evidence was insufficient to support the jury verdict convicting him of one count of conspiracy to launder money and another of substantive money laundering. *See* 18 U.S.C. § 1956(h), 1956(a)(1)(B)(i), (ii). Because Fernandez objected to the sufficiency of the evidence at the trial level, we evaluate whether a reasonable jury could have found that the evidence established the guilt of the defendant beyond a reasonable doubt. *United States v. Lewis,* 476 F.3d 369, 377 (5th Cir. 2007). Due to the jury verdict of guilt, the evidence is viewed in the light most favorable to the government, which receives all reasonable inferences and credibility choices. *Id.*

The specific nature of this conspiracy required the government to show that Fernandez knowingly conspired with at least one other person to (1) conduct or attempt to conduct a financial transaction; (2) with the knowledge that it involved proceeds of specified unlawful activity (here, controlled substance offenses); and (3) with the knowledge that the transaction was designed in whole or in part to conceal the nature, source, ownership, or control of the proceeds,

or to avoid a federal or state reporting requirement. *United States v. Adair,* 436 F.3d 520, 524 (5th Cir. 2006).

The government's conspiracy case was that Fernandez served as a conduit for the proceeds of the Organization, using real estate transactions as a cover. The conspiracy was alleged to have existed from August 1988 until July 2005.

A major part of the government's case was the testimony of an undercover agent, Liss, who met with Fernandez on numerous occasions while posing as a Colombian "high-level drug trafficker." Liss began meeting with Fernandez in July 1995. He testified that Fernandez was paranoid about potential surveillance by law enforcement, insisting meetings take place outdoors with only one other person, and scanning police frequencies for evidence of detection. Fernandez was justified in his paranoia. After Liss said he had "large sums of money that needed to be laundered," Fernandez responded that he could help with real estate and investment transactions. According to this testimony, Fernandez responded to a request for more details about his money laundering techniques by saying, "I don't ask you about your drug business, you should not ask me about my money laundering business, or how I move the money." Fernandez also mentioned that most of his experience was with the proceeds of marijuana, while Liss presumably would be dealing in cocaine.

The government also introduced approximately two hours of recorded phone calls between Liss and Fernandez, during which Fernandez offered to introduce Liss to Fernandez's "friend," a Mexican "high-level drug trafficker." The government asserts this was a reference to Mario Marquez. Liss testified that the conversations contained various mutually understood coded references to the drug trade, including discussions of "real estate."

The government next alleges that a number of particular transactions show Fernandez's use of "shell companies" to receive money from Mario and Diana Marquez, launder it, and then return it to them. Examples supported by evidence at trial are said to be these:

- real estate was transferred from the Marquez family to a Fernandez-controlled company, then used as collateral for a half-million dollar loan;
- numerous high-value cashier's checks were exchanged between Fernandez and the Marquezes, which Fernandez could not explain at trial;
- Diana Marquez lived rent free in a house owned by Fernandez;
- Diana Marquez also received false W-2 forms from a Fernandez-controlled corporation by which she was not employed; and
- Mario Marquez wrote Fernandez from prison directing him to deposit immediately as much money as possible in Diana Marquez's account.

One agent summarized the government's case by testifying that "there was a 'flow of money' from Mario Marquez to Horacio Fernandez, 'and everything has shown that the money has come back to the Marquezes.'"

We just reviewed the evidence as to a conspiracy. The substantive money laundering count, also based on Section 1956(a)(1)(B)(i), involved a $17,000 down payment used to purchase a house in El Paso in August 2003. The evidence was that Fernandez, through one of his corporations, sold a note on another property for $80,000, and directed the buyer to remit part of the payment as a $17,000 check to Mario Marquez. The check was deposited in Diana Marquez's account, from which a cashier's check of just under $17,000 was written a few days later to purchase the house that is the subject of the count.

Fernandez argues that he was involved in a legitimate real estate business focused on purchasing properties at foreclosure sales; the cashiers checks that were introduced in the government's case were for legal purposes. Fernandez lists various checks contained in the government exhibits, repeating the basic description of them while stating, with respect to most, that "[n]o tracing was offered to establish the source of these funds or the use made of the funds." Fernandez explains his possession of the funds as resulting from the "substantial revenues" of his real estate business and a "substantial inheritance" he received on his father's death. He also argues that the prosecution's theory was not matched by the

evidence, because one government witness testified that Marquez told him that Marquez had transferred ten million dollars to a "real estate person," and that this was shorthand for Fernandez. Since the total amount the court attributed to him at sentencing was just $452,394.15, he argues that the government's theory was contradicted by its own evidence.

Fernandez has not made the high showing required to show the evidence was insufficient to convict him of the conspiracy charge. "Circumstantial evidence may establish the existence of a conspiracy, as well as an individual's voluntary participation in it, and 'circumstances altogether inconclusive, if separately considered, may, by their number and joint operation . . . be sufficient to constitute conclusive proof.'" *United States v. Garcia Abrego,* 141 F.3d 142, 155 (5th Cir. 1998) (quoting *United States v. Roberts,* 913 F.2d 211, 218 (5th Cir. 1990)). Specifically responsive to Fernandez's assertion that the government failed to "trace" the origins of particular checks, the prosecution "is under no duty to trace the individual funds" involved in particular transactions, or to examine a transaction "wholly in isolation if the evidence tends to show that it is part of a larger scheme that is designed to conceal illegal proceeds." *United States v. Rodriguez,* 278 F.3d 486, 491 (5th Cir. 2002).

Given the overwhelming evidence that Mario Marquez was the head of an international drug cartel, the jury could have concluded that the large-scale transfers of money from the Marquezes, through

Fernandez or various shell corporations and back again, proved that the funds were the proceeds of the specified drug offenses and that the transactions were designed to conceal the funds' origins. Evidence of Fernandez's close contact with the Marquezes and Liss's testimony were sufficient to permit a reasonable jury to conclude that he was aware of the origins of the proceeds and conscious that he was engaged in money laundering. Fernandez did engage in some legitimate business, but the government had evidence he also engaged in this criminal conduct. He and the Marquezes had a shared interest in race horses, but there was evidence they shared other interests too. The jury had sufficient evidence of guilt.

With respect to the substantive count, the evidence was sufficient for the jury to find that the real estate transaction was a means of returning drug operations' money that the Marquezes had previously transmitted to Fernandez for laundering. Indeed, the fact that the particular money received from the buyer of the note was not drug money did not contradict the government's theory. Rather, it illustrated that the money had been laundered – "clean" money from an outsider was exchanged for the "dirty" money the Marquezes had earlier given Fernandez. At least the jury could have so found, given the number of transactions between them discussed in connection with the preceding count. We affirm Fernandez's convictions.

1. b. Effect of Recent United States Supreme Court Opinion

On appeal, Fernandez argues that a Supreme Court decision handed down after his conviction requires reversal of his money laundering convictions. *See United States v. Santos,* 128 S. Ct. 2020 (2008). In *Santos,* a plurality of the Court held that the phrase "proceeds of some form of unlawful activity," found in Section 1956(a)(1), means the "profits," rather than merely the "receipts," of the activity. *Id.* at 2025. Here, the district court instructed the jury that "'proceeds' includes any property, or any interest in property, that someone acquires or retains as a result of the commission of the underlying specified unlawful activity." That instruction did not require jurors to focus on "profits."

We may review a claim raised for the first time on appeal, even when based on an intervening Supreme Court decision, only for plain error. *United States v. Rios-Quintero,* 204 F.3d 214, 215 (5th Cir. 2000). Such a review requires that there be error, that is plain, and that affects the defendant's substantial rights. *Id.* Even then, the court must determine that the error "seriously affects the fairness, integrity or public reputation of judicial proceedings" in order to correct it. *Id.* We will judge whether the error is plain based on the state of the law at the time of the appeal, not of the trial. *Johnson v. United States,* 520 U.S. 461, 468 (1997).

Here, the first two prongs of the inquiry are closely related. In light of *Santos,* it might seem apparent that "proceeds" may not be defined simply as any property acquired at some point during the transaction; "profit" is commonly defined as "the excess of revenues over expenditures." BLACK'S LAW DICTIONARY 1228 (7th ed. 1999).

The issue is complicated by the fact that in *Santos,* Justice Stevens wrote a concurring opinion that was necessary to forming a majority. The plurality justices acknowledged that the Stevens opinion governed to the extent it was narrower than the Court's opinion. *Santos,* 128 S. Ct. at 2031. Justice Stevens found that Congress intended "proceeds" to have different meanings in different contexts. Specifically, he suggested, on the basis of legislative history, that "Congress intended the term 'proceeds' to include gross revenues from the sale of contraband and the operation of organized crime syndicates involving such sales." *Id.* at 2032 (Stevens, J., concurring). Thus, he did not "agree with the plurality that the rule of lenity must apply to the definition of 'proceeds' for these types of unlawful activities." *Id.* at 2032 n.3.

Justice Stevens's comment that gross revenues were the relevant proceeds applies to the sale of contraband and the operation of criminal organizations, precisely the type of offenses for which Fernandez was convicted. While Justice Stevens and the plurality disagreed over the precise precedential effect of

his statement, the uncertainty renders any error here not "plain."

Even were there error that was plain, we must decide whether the error affects Fernandez's substantial rights; that is, whether it "must have affected the outcome of the district court proceedings." *United States v. Mares,* 402 F.3d 511, 521 (5th Cir. 2005). The sharp factual distinctions between this case and *Santos* explain why Fernandez cannot meet that burden. In *Santos,* the defendant was convicted of money laundering based on his role in operating an illegal lottery. He supervised the use of funds collected in the lottery to pay the salaries of those working beneath him, as well as to pay off the winners of the lottery. *Santos,* 128 S. Ct. at 2022-23. He was convicted under 18 U.S.C. § 1956(a)(1)(A)(i), which prohibits conducting a financial transaction with the proceeds of illegal activity "with the intent to promote the carrying on of" additional illegal activity, which in *Santos* was the continued operation of the lottery. It was thus apparent in *Santos* that the conviction could not stand under the new definition of "proceeds," because all the defendant was accused of was plowing the receipts of the gambling operation back into the business.

By contrast, Fernandez's convictions rest on Section 1956(a)(1)(b)(i) and (ii), which prohibit transactions designed to "conceal or disguise" the origins or location of the proceeds of illegal activity, or to avoid legal reporting requirements. Given the scope of the government's evidence that Fernandez was involved

in a string of transactions over a period of fifteen years involving real estate, horses, and multiple shell corporations, we are unable to find that the outcome of the trial on these charges would necessarily have been different had the jury known that it must find the transactions were conducted with the "profits" of, rather than property acquired or retained from, the drug-trafficking activity. Fernandez did not simply take the receipts of the Organization and use them to purchase more drugs or pay salaries. Rather, the evidence was that his machinations were designed to conceal large amounts of money not apparently needed to run the operation. That would be "profits."

Because we do not find that the third prong of the plain error test is met, we reject the *Santos* challenge to Fernandez's convictions.

2. Fernandez Severance Motion

Fernandez argues that the district court erred in refusing to sever his trial from that of his co-defendants. A district court's refusal to grant a severance is reviewed for any abuse of discretion. *United States v. Arzola-Amaya,* 867 F.2d 1504, 1516 (5th Cir. 1989). A severance must be granted "only if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants or prevent the jury from making a reliable determination of guilt or innocence." *United States v. Bermea,* 30 F.3d 1539, 1572 (5th Cir. 1994).

Fernandez acknowledges the general rule that co-conspirators should be tried together. *Zafiro v. United States,* 506 U.S. 534, 537 (1993). He argues that the seriousness of the drug and conspiracy to kill charges against his co-defendants, together with the breadth of evidence admitted under those counts but irrelevant to the money laundering charges he faced, were sufficient to require severance here.

Fernandez argues that the murder charge against Marquez-Ramos was particularly likely to create unfair prejudice against him. *See United States v. Cortinas,* 142 F.3d 242, 248 (5th Cir. 1998). Unlike in *Cortinas,* Fernandez's involvement with the conspiracy overlapped with the time of the murder, and his co-defendants were not, as in *Cortinas,* unknown to him or operating wholly independently. "Any prejudice created by a joint trial can generally be cured through careful jury instructions." *Bermea,* 30 F.3d at 1572. Such was the case here. The district court emphasized that each charge against each defendant was to be considered separately. The jury was instructed that 19 of the 41 witnesses were not testifying against Fernandez. Other instructions were that each defendant's case "should be considered separately and individually" and "separate consideration" given to each defendant. Fernandez has not overcome the presumption that jury instructions can cure prejudice, or shown that the district court otherwise abused its discretion in refusing to sever his trial.

3. *Alleged Evidentiary Errors Regarding Fernandez*

Fernandez argues that the district court violated evidentiary rules in admitting a proffer letter to him from the government. In June 2005, Immigration and Customs Enforcement agents met with Fernandez to inform him of a threat against his life. The conversation caused Fernandez to provide some information about the Organization and offer to provide more in exchange for immunity from prosecution. The next day, agents brought Fernandez a proffer letter signed by an Assistant United States Attorney ("AUSA"), but he asked for time to consult with his attorney. No deal was ever consummated. At trial, the district court permitted agents to testify about this exchange.

The admissibility of evidence is reviewed for abuse of discretion. *United States v. Coleman,* 997 F.2d 1101, 1104 (5th Cir. 1993). When, as here, no objection was made at trial, this court reviews for plain error. *United States v. Jones,* 484 F.3d 783, 792 (5th Cir. 2007).

A "statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty" is not admissible. F.R. E. 410(4). That prohibition is inapplicable because Fernandez's discussions were with government attorneys, not with law enforcement officers. *United States v. Keith,* 764 F.2d 263, 265 (5th Cir. 1985). Although a prosecutor signed the proffer letter that Fernandez sought after the first day's discussions,

Fernandez does not explain how his initial statements to law enforcement agents, prior to contacting any attorney, could have been made "in the course of plea discussions with an attorney for the prosecution."

Rule 408 makes inadmissible evidence of "furnishing or offering or promising to furnish . . . a valuable consideration in compromising or attempting to compromise a claim," as well as "conduct or statements made in compromise negotiations regarding the claim." In this circuit, Rule 408 applies to criminal cases. *United States v. Hays,* 872 F.2d 582, 588-89 (5th Cir. 1989). Even assuming that it was error to admit the evidence under Rule 408, the mistake would not satisfy the plain error test, which requires that an error be plain, affect substantial rights, and seriously affect the fairness, integrity, or public reputation of judicial proceedings. *Jones,* 484 F.3d at 792. To ask whether a substantial right was affected is to ask whether the error "must have affected the outcome of the district court proceedings." *United States v. Mares,* 402 F.3d 511, 521 (5th Cir. 2005). The defendant bears the burden of persuasion. *Id.* Fernandez does not meet that burden. He does not address the effect of the weight of the evidence against him, which, as we have discussed, was substantial and sufficient for conviction without the proffer letter evidence. Moreover, the most that Rule 408 would appear to bar is Fernandez's opening of the discussion about immunity and the ensuing letter; the preceding conversation with the agents,

including his knowledge and possession of records relating to Marquez and perhaps even his offer to "help out," which occurred before he decided to ask for protection, would remain admissible. Thus, Fernandez cannot show that any violation of Rule 408 was plain error, and we affirm on this issue.

4. Brady Error Regarding Fernandez

Fernandez alleges that the government failed to provide all evidence favorable to him, as it is required to do. *Brady v. Maryland,* 373 U.S. 83, 87 (1963). The alleged violation was the failure to turn over to the defense a 1995 internal report written by a former IRS agent. According to Fernandez, his investigator located the agent after trial. The report was issued at the conclusion of the earlier investigation. Fernandez argues that it found no evidence against him of money laundering or tax evasion.

Though there are issues now regarding the report itself and what it said, the 1995 investigation and its discontinuation were known at the time of trial. Jurors were told in closing argument that the government had all this evidence in 1995 and did nothing. Only after the trial was the report finally obtained at the request of the prosecutor from the regional office of the IRS. The district judge examined the report *in camera* when it was submitted as part of the motion for a new trial. He found no exculpatory material in the report.

When a defendant seeks a new trial on the basis of a *Brady* violation, he must show that "(1) the prosecution did not disclose the evidence; (2) the evidence was favorable to the defense; and (3) the evidence was material – i.e., there is a reasonable probability that if the government had disclosed the evidence, the result of the proceeding would have been different." *United States v. Infante,* 404 F.3d 376, 386 (5th Cir. 2005). We review the existence of a *Brady* violation *de novo. Id.*

The government argues that neither the second nor third factors are satisfied here. We have noted that the district court found that there was no exculpatory material in the report. The only evidence Fernandez offers that the report was exculpatory is an unsworn post-trial interview with the former IRS agent who wrote it. Other courts have held that the subjective opinion of a non-witness agent as to the quantity or quality of evidence is not relevant to this question. *See Williams v. United States,* 74 F.3d 1242, 1996 WL 4358, at *4 (7th Cir. 1996) (unpublished table decision); *United States v. Montalvo,* 20 F. Supp. 2d 270, 279 (D.P.R. 1998). Even if there was favorable evidence, it was not material. That is because Fernandez's counsel was already aware that an investigation had taken place in the mid-1990s that led to no action against his client, and argued this point to the jury at closing argument.

Given the scope of the evidence against Fernandez over the entire period of the charged conspiracy, there is no reasonable probability that the

outcome would have changed had a report from 1995 – ten years before the end of the conspiracy – been introduced. Moreover, Fernandez does not offer an analysis of the document or explain why the district court's evaluation of it as non-exculpatory was erroneous. We find no *Brady* violation.

5. Fernandez Sentencing Errors

Finally, Fernandez raises a number of claims with respect to his sentence. Sentences are reviewed for reasonableness. A sentence within the properly calculated Guidelines range is presumed reasonable on appeal. *United States v. King,* 541 F.3d 1143, 1145 n.1 (5th Cir. 2008) (stating that we continue to apply this presumption after it was approved in *Rita v. United States,* 127 S. Ct. 2456, 2466-68 (2007)). Findings of fact used in calculating the Guidelines range are reviewed for clear error, while interpretation of the Guidelines themselves is reviewed *de novo. United States v. Conner,* 537 F.3d 480, 489 (5th Cir. 2008).

Fernandez challenges several aspects of the calculation. The first concerns the amount of laundered funds. The district court found that the total amount of laundered funds for which Fernandez was responsible was $535,514.78. Fernandez's principal objection to this sum is that the court should not have included the $100,000 proceeds from the sale of thoroughbred horses that had been owned by Mario Marquez and purchased by a Fernandez-operated

company a few days after Marquez was arrested. Fernandez testified about his sale of the horses and return of the money to the Marquez family. Part of the basis for alleging error is a dispute over the meaning of Fernandez's testimony at trial. He was asked if he remembered the sales price for the horses, and he answered: "Just kind of guessing would be maybe, like, 100,000, if the horses were sold for what they should have; maybe 120." The punctuation, of course, was provided by the court reporter. At sentencing, the district court agreed with the prosecutor's opinion that Fernandez was asserting that the horses "should have" sold for $120,000, but in fact only sold for $100,000. While the testimony is perhaps subject to more than one plausible interpretation, the district judge chose a plausible meaning. We find no clear error.

Fernandez argues that, even if $100,000 was the correct amount, it was improper to attribute the money to the proceeds of illegal drug activity. There was, though, substantial evidence on the scope of the Marquez Organization and the cash flow it generated. The evidence was overwhelming that Mario Marquez was a major international drug smuggler, who had no other apparent source of income, and the horses were sold and $100,000 transferred in response to his arrest. Thus, the court could permissibly conclude that the horses had originally been purchased with drug proceeds.

Fernandez also objects to a six-level increase due to his belief that the funds were the proceeds of, or

were intended to promote, a controlled-substance offense. *See* U.S.S.G. § 2S1.1(b)(1). The jury had to find that Fernandez was aware the proceeds stemmed from controlled-substance violations in order to convict him of the money laundering counts. It was not error for the district court to make the same finding.

Next, Fernandez objects to a two-level increase for abusing a public trust or using a special skill in the commission of his offenses. *See* U.S.S.G. § 3B1.3. The special skill adjustment was justified in the PSR by Fernandez's position as a licensed real estate broker, which it found was instrumental to the means by which he laundered money. This adjustment is supported by the facts. The district court could have found in at least two of the real estate transactions examples of particular skill. The application note for the "special skill" enhancement refers to occupations for which "licensing" is required; Fernandez was a licensed real estate agent.

Finally, Fernandez objects to a two-level enhancement for sophisticated money laundering. *See* U.S.S.G. § 2S1.1(b)(3). Both sides rely on commentary for that provision. It lists four circumstances to be considered in determining whether the enhancement applies: 1) fictitious entities, 2) shell corporations, 3) layered transactions with illegitimate funds, and 4) offshore accounts. The district court could have concluded that the charged transactions involved multiple transactions, i.e., "layering," and that a number of Fernandez's corporation [sic] were shell

corporations. We once upheld use of the sophisticated money laundering enhancement when the conduct was arguably less egregious than that here. *See United States v. Charon,* 442 F.3d 881, 891 (5th Cir. 2006).

We affirm Fernandez's convictions and sentence.

B. Diana Marquez

1. a. Sufficiency of the Evidence on Diana Marquez's Drug Counts

Diana Marquez was convicted of conspiracy to possess with intent to distribute 1,000 kilograms or more of marijuana, and of conspiracy to import marijuana in the same amount. *See* 21 U.S.C. §§ 846, 841(a)(1), 841(b)(1)(A)(vii) (possession with intent to distribute); 21 U.S.C. §§ 952(a), 960(a)(1), 960(b)(1)(G) (importation). She argues that the evidence was insufficient to convict her on these counts.

To prove a conspiracy, the government must show "(1) an agreement between two or more persons to pursue an unlawful objective; (2) the defendant's knowledge of the unlawful objective and voluntary agreement to join the conspiracy; and (3) an overt act by one or more of the members of the conspiracy in furtherance of the objective of the conspiracy." *Conner,* 537 F.3d at 484.

The evidence to prove these charges was largely circumstantial but fairly substantial. One of Diana Marquez's former employers testified that she

admitted helping Mario Marquez deliver drugs by carrying them in her purse. She also told the witness that she had sent drug proceeds to her mother, who used the money to buy two houses. Neighbors of the Marquezes and employees of the Organization testified that they had seen marijuana in Diana Marquez's house on several occasions, including "a load of marijuana, in burlap sacks" and "large boxes." There was testimony that Diana Marquez helped others stay aware of Mario's frequently changing cell phone numbers, and told one of the employees to throw away a slip of paper with the number on it. There was evidence that Diana Marquez "was the one that knew the immigration people" who could ease the importation of drugs at the border. She was involved in a trip to find a house in El Paso that became a convenient transhipment point for marijuana. Two witnesses testified that Diana Marquez was involved in conversations during the trip about the suitability of various houses for drug operations, including favoring one house because it had a basement for storage.

A key witness against all the defendants was Ricardo Sepulveda, who had worked for the Organization. It was the murder of his mother in Juarez for which one of the other defendants was convicted. Sepulveda testified to overhearing Diana Marquez warn Mario Marquez not to return home after their house was searched, and that she had boasted about agents not finding drug-related documents during the search. There was testimony that she had helped

Mario Marquez in his search for Sepulveda after he had fled the house where his mother was killed.

In addition to the testimony about Diana Marquez's actions and words, there was incriminating evidence found in her locker at the Texas Alcoholic Beverage Commission office where she worked. When opened after her arrest, it contained $8,000 in cash, deposits slips totaling close to $90,000, and a statement from a Mexican bank showing a balance of $118,569.18.

All this evidence was more than sufficient to support Diana Marquez's conviction for conspiracy to possess with intent to distribute marijuana.

With respect to the importation count, there was testimony from Sepulveda that Diana Marquez would call Mario Marquez to inform him what traffic lane at the border station was harder that day to use for importation. Sepulveda testified that she "played a role of importing marijuana and drugs through the port of entry." He also testified that drug couriers, after crossing the border from El Paso into Juarez, frequently saw Diana Marquez at the "yellow and green house," where one saw her holding a six-inch stack of money, with another such stack nearby.

This mass of evidence fully supports a finding that Diana Marquez was not just present during the conspiracy. Her presence and association is part of the circumstantial evidence that she voluntarily joined the conspiracy; that a party does not physically possess drugs and plays a minor role – though

whether Diana Marquez's role should be labeled "minor" is debatable – does not defeat conviction. *United States v. Ayala,* 887 F.2d 62, 67-68 (5th Cir. 1989). It is true that evidence of involvement in a conspiracy can be too attenuated to sustain a conviction. *United States v. Gardea-Carrasco,* 830 F.2d 41, 44-45 (5th Cir. 1987). That defect does not exist in the evidence against Diana Marquez. The testimony against her did not describe a person unluckily present on only a single occasion. Her knowledge of the illegal activity and assistance to its success were sufficiently proven.

We affirm the convictions on the drug counts.

1. b. Evidence Sufficiency on Diana Marquez's Money Laundering Counts

Diana Marquez next challenges her convictions for conspiracy to commit money laundering, and for two counts of engaging in monetary transactions with criminally derived property in excess of $10,000. *See* 18 U.S.C. § 1956(h), 1956(a)(1)(B)(i), (ii) (money laundering); 18 U.S.C. § 1957 (criminal proceeds).

The conspiracy count was the same as that charged against Fernandez. She needed to be engaged in a conspiracy with at least one other person: (1) to conduct or attempt to conduct a financial transaction; (2) with the knowledge that it involved proceeds of specified unlawful activity; and (3) with the knowledge that the transaction was designed in whole or in part to conceal or disguise the nature, source,

ownership, or control of the proceeds, or to avoid a federal or state reporting requirement. *See Adair,* 436 F.3d at 524-25.

Marquez primarily argues that the evidence of her knowledge was missing. In her argument, she was "a housewife kept in the dark," who had no knowledge of the criminal origins of the funds she used. There certainly was evidence to dispel the darkness that she argues surrounded her. She accepted substantial money and rent-free housing from Fernandez. Sepulveda testified that she told him she was going to pick up deeds to property that had been "washed to the kid's names." She and Fernandez participated in a property-holding entity called the "Marquez land trust." She personally purchased houses with large sums of unexplained cash, including a house purchased in her son's name. The banking records in her locker at work also would have shed some light on the money laundering conspiracy.

Given the evidence against Fernandez, and the sufficiency of the evidence of Diana Marquez's involvement in the drug conspiracy, jurors could reasonably infer that she was aware of the origins of the money Fernandez gave her when her husband was in prison, and also knew of Fernandez's role in the Organization. After all, she referred to Fernandez as "the real estate person," whom she had to meet in order to get "washed" deeds to property. Further, the jury could have drawn an inference of guilt from the

purchase of the house in her son's name. The evidence was sufficient for a conviction on this count.

Diana Marquez also was charged with the knowing use of criminal proceeds in relation to her purchases in 2005 of two houses in her 17- or 18-year-old son's name in El Paso. *See* 18 U.S.C. § 1957. Payment for one was with $75,000 in cash; for the other, she provided $21,000 in assorted money orders and cashier's checks. Diana Marquez does not dispute that she purchased the houses, but she argues the government failed to show the origins of the money. She claimed the money for one came from a gift from Mario Marquez to their son on his high school graduation, and for the other the funds were from the son's selling of cars given to him by a member of the Organization described as Mario Marquez's "right-hand man," at Mario's direction. She again argues that the money could have come from Mario's ranching and farming operations just as well as from marijuana smuggling, and that since she had no knowledge of any drug activity, she could not know where the money came from.

The evidence was that Mario Marquez had little legitimate income. Diana Marquez's salary was about $21,000 per year. There was testimony that she referred to her "washing" money through her children. A jury's reasonable credibility choices, given the totality of the evidence about her involvement in the Organization generally, the unusual nature of a $75,000 cash transaction, and her other connections to money laundering, would support her conviction.

We affirm the money laundering convictions.

2. Severance of Diana Marquez

Like Fernandez, Diana Marquez argues that she suffered unfair prejudice because of the joint trial. As we noted when discussing this issue when it was raised by Fernandez, there is a danger of prejudice towards a defendant whose co-defendants are charged with violent acts with which she has no connection. *Cortinas,* 142 F.3d at 248. The violent act – conspiracy to commit murder – that she wishes not mentioned was charged against her brother-in-law, Hector Marquez-Ramos. The government's evidence placed Diana Marquez in the vicinity of the Mexican house where the murder occurred the day before it happened. There was evidence that she aided her husband Mario Marquez in his pursuit of Sepulveda, who fled the house after his mother was seized. Rather differently, we found a severance required in *Cortinas* when members of a conspiracy were jointly tried with co-defendants whom they did not know and whose terms as co-conspirators did not overlap with their own. *Id.*

Diana Marquez has not shown that the district court's refusal to sever resulted in a specific trial right being infringed or jurors being unable to make a reliable determination of guilt in her case. Severance was not required.

3. Sentencing Error as to Diana Marquez's Drug Counts

The district court found that Diana Marquez was responsible for 48,751.5 kilograms of marijuana. Under the Sentencing Guidelines, that quantity resulted in a range of 360 months to life. Her sentence was 360 months.

Diana Marquez asserts that this drug quantity could not have resulted from activity "reasonably foreseeable" to her as a member of the conspiracy. *See* U.S.S.G. § 1B1.3(a)(1)(B); *United States v. Carreon,* 11 F.3d 1225, 1230 (5th Cir. 1994). Reasonable foreseeability does not require proof of knowledge of specific quantities; a defendant with an "obvious understanding of the general breadth of the drug enterprise" may be held liable for the full amount involved. *United States v. Duncan,* 191 F.3d 569, 576 (5th Cir. 1999). We have already discussed the evidence that supports Diana Marquez's knowledge of the breadth of the conspiracy. We also note that the government in fact consented to halving the drug amount attributed to the conspiracy as a whole.

Marquez argues that her case is like one in which we found procedural error when a "district court had failed to make an express finding that the conspiratorial activity at issue was reasonably foreseeable as required" by the Guidelines, and noted that Federal Rule of Criminal Procedure 32 requires the district court to make findings about contested facts in the Presentence Report. *Carreon,* 11 F.3d at

1230-31. On the other hand, district courts need not ritualistically detail each possible finding. When "the findings in the PSR are so clear" that guesswork by the reviewing court is unnecessary, the sentencing judge may "make implicit findings by adopting the PSR." *Id.* at 1231. Here, it cannot be said, as was the case in *Carreon,* that Marquez makes "voluminous" or particular objections to the multiple, specific findings of various drug quantities from the PSR. The district court, in rejecting her objection to the PSR, did not use the phrase "reasonably foreseeable," although Marquez's attorney had used it just before the ruling. We find the court made a sufficiently clear ruling on the issue. Accordingly, there was no procedural error in the calculation.

The next argument is that the district court failed to consider the disparity in her sentence and those of her more culpable co-conspirators who pled guilty. "[T]he need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct," is one of the factors a sentencing judge must consider. 18 U.S.C. § 3553(a)(6). A within-Guidelines sentence is presumptively reasonable on appeal. *King,* 541 F.3d at 1145 n.1. We have held that "concern about unwarranted disparities is at a minimum when a sentence is within the Guidelines range." *United States v. Willingham,* 497 F.3d 541, 545 (5th Cir. 2007). Marquez does not inform us of the offenses for which the other defendants she lists were convicted, so we cannot compare the similarity of their conduct.

Moreover, she does not cite any authority that found a within-Guidelines sentence (indeed, at the bottom of the Guidelines range) unreasonable on a similar basis. The district court did not commit clear error in this aspect of its sentencing.

4. Sentencing Error as to Diana Marquez's Money Laundering Count

Along similar lines, Marquez objects to the disparity between her sentence and Fernandez's on the money laundering counts. Fernandez received a total sentence of 160 months, while she received the statutory maximum, 240 months. This was because the district court calculated her Guidelines range using a cross-reference to her drug convictions, and applied "[t]he offense level for the underlying offense [drug conspiracy] from which the laundered funds were derived." U.S.S.G. § 2S1.1(a)(1). Fernandez was not convicted of drug crimes, and thus was sentenced based on a different Guideline. *Id.* § 2S1.1(a)(2).

This objection was not made at sentencing, so review is for plain error. *United States v. Peltier,* 505 F.3d 389, 391 (5th Cir. 2007). Marquez's argument is cursory and cites no authority for the proposition that the different sentences create reversible error. Given that Fernandez was not convicted of the drug conspiracy offenses, there was a reasonable basis for the district court to take different courses in the two sentencings.

Marquez's convictions and sentence are affirmed.

C. Hector Leonel Marquez-Ramos

Hector Marquez-Ramos was convicted of the most serious charge of the three defendants, conspiracy to murder in a foreign country. *See* 18 U.S.C. § 956(a)(1). He was charged in connection with the murder of Maria Eliza Liuzza in Juarez, Mexico. He was also convicted of four drug counts: conspiracy to possess with intent to distribute 1000 kilograms or more of marijuana, in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(A)(vii); conspiracy to import 1000 kilograms or more of marijuana, in violation of 21 U.S.C. §§ 952(a), 960(a)(1), and 960(b)(1)(G); possessing with intent to distribute 100 kilograms or more of marijuana, in violation of 21 U.S.C. § 841(a)(1) and 841(b)(1)(B)(vii); and distributing 1000 kilograms or more of marijuana with the intent that it be imported into the United States, in violation of 21 U.S.C. § 959.

He raises several issues regarding his conviction and his sentence, which we now examine.

1. Evidence Against Marquez-Ramos on Conspiracy to Murder

Marquez-Ramos first challenges the sufficiency of the evidence on the count regarding conspiracy to murder. This is the relevant statutory language:

> Whoever, within the jurisdiction of the United States, conspires with one or more other persons, regardless of where such other person or persons are located, to commit at

> any place outside the United States an act that would constitute the offense of murder . . . shall, if any of the conspirators commits an act within the jurisdiction of the United States to effect any object of the conspiracy, be punished as provided in subsection (a)(2).

18 U.S.C. § 956(a)(1).

The offense can be divided into four elements relevant to the facts of this case: (1) Marquez-Ramos and at least one other person agreed to murder Maria Elida Liuzza; (2) he knew the unlawful purpose of the agreement and joined it willingly; (3) one of the conspirators committed at least one overt act in the United States furthering the conspiracy; and (4) at least one of the conspirators was within the jurisdiction of the United States when that person conspired. *See United States v. Wharton*, 320 F.3d 526, 537-38 (5th Cir. 2003).

Marquez-Ramos argues that the government failed to meet three of these four elements. First, he argues there was no showing that any of the conspirators were within the jurisdiction of the United States when the agreement was made; second, that there was insufficient evidence that any agreement to kill Liuzza had been made at all; and third, that no overt act had occurred. He also argues that no showing was made that Liuzza was killed by "choking or beating," as alleged in the indictment.

We first explain in some detail the government's evidence of the murder conspiracy. Hector Marquez-Ramos is the brother of Mario Marquez, the latter being the head of a major drug enterprise that imported large quantities of drugs, especially marijuana, from Mexico into the United States. In early 2005, the Organization was "in turmoil," after increasingly frequent drug seizures, difficulties in transmitting drugs and money, and infiltration by the authorities. Marquez-Ramos, who had served as an "enforcer" for the Organization in the past, was dispatched, with another member of the group, to Detroit, the residence of Ricardo Sepulveda, the Organization's main agent in the Midwest.[1] The Organization had grown increasingly frustrated with Sepulveda over the preceding months, as he had refused orders to carry out a murder for hire and to pick up a large truckload of marijuana for distribution. He owed around a million dollars to the Organization. While in Detroit, Marquez-Ramos had Sepulveda show him where some lower level members of the Organization who were suspected of stealing from the group lived. Marquez-Ramos told Sepulveda that he planned to have them killed. While Marquez-Ramos was in Michigan, Sepulveda told him he wanted to quit the Organization.

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[1] The testimony of Sepulveda, who pled guilty and testified for the government at trial, is a major source of the information about the conspiracy to kill count.

After Marquez-Ramos left the Midwest, Sepulveda received a call from Mario Marquez asking him to go to Juarez, Mexico to "touch base" and smuggle cash back into Mexico. Sepulveda took his mother with him. They arrived in El Paso on February 13, 2005. When at a Marquez-controlled house in El Paso, Marquez-Ramos and another Organization member, Esaul Guerrero, packed bundles of cash into the door panels and console of Sepulveda's truck. Sepulveda and his mother that evening then crossed into Mexico.

On arrival at an Organization house in Juarez, Mexico known as the "yellow and green house," Sepulveda asked to be paid for the cash smuggling. Mario Marquez said he would have to wait for another Organization member to arrive. The next day, Sepulveda was once again told to wait another day. That night there was a cookout at the yellow and green house. Mario Marquez told Sepulveda that he was concerned that a member of the Organization in the Midwest, whom Sepulveda had brought into the Organization, had threatened to go to the authorities. They also talked about Marquez-Ramos's trip to the Midwest. Sepulveda then told Mario, as he had earlier told Marquez-Ramos, that he wanted to "pull out" of the Organization.

The next morning, Sepulveda and his mother wanted to leave and return to the United States. Mario Marquez asked them to stay and have breakfast. Marquez-Ramos took them to a restaurant. When they returned to the yellow and green house,

Sepulveda saw a man with a "wooden handle" outside. Later, when he, his mother, Marquez-Ramos, and others were inside the living room, yet another Organization member arrived and said he had been in a car accident. Sepulveda and Marquez-Ramos went outside to see what had happened, passing the putative accident victim and others on their way in. Marquez-Ramos then "rushed" back inside, and Sepulveda realized there was nothing wrong with the car. When he reentered the house, Sepulveda found his mother, Maria Elida Liuzza, laying on the floor. One man was on top of her with "an object in his hand," while another Organization member washed his hands in the kitchen. His mother was moaning, in pain, and out of breath.

Sepulveda immediately ran out of the house, pursued by some of the men. He apparently was helped by a motorist to reenter the United States. Once there, he went to the authorities. They taped a series of calls he made to Mario and Diana Marquez; both Marquezes repeatedly asked him where he was. Another witness testified that Mario Marquez subsequently told him that Sepulveda's mother was murdered, and that Sepulveda had "escaped."

The government's view of the evidence is that the jury could have found that Marquez-Ramos was part of a conspiracy, hatched in the United States, that had as its object the murder of Maria Elida Liuzza in Mexico. The conspiracy was a late addition to a pre-existing conspiracy to murder Sepulveda in Mexico. There was evidence that Marquez-Ramos worked

closely with Mario Marquez, and that Marquez-Ramos had past "enforcement" duties that included committing acts of violence against suspected traitors to the Organization. The motive for Mario Marquez and Marquez-Ramos to kill Sepulveda would be the disarray in the Organization, Sepulveda's owing money to Mario Marquez, Sepulveda's having declined to undertake two jobs, and Sepulveda's telling Marquez-Ramos he planned to quit. The motive to kill his mother arose when he arrived in El Paso with her. That placed her "naturally within the ambit of the plan to kill," because she could not safely be left alive.

Thus, the government's theory was that Mario Marquez's invitation for Sepulveda to go to Juarez was a ruse for the planned murder. An overt act occurred when Marquez-Ramos met Sepulveda in El Paso and loaded the bundles of cash into his truck for smuggling into Mexico.

Another question is whether one of the conspirators was within the United States when he conspired. The government offers two possible ways to answer the question favorably. One is that jurors could have inferred that Marquez-Ramos and Esaul Guerrero, "tacit[ly] or otherwise," hatched the conspiracy to kill Liuzza when both men were present in El Paso. They would have realized it would be necessary to do so as part of the existing conspiracy to kill Sepulveda. The other possibility is that Mario Marquez, at that time in Mexico, "would have been informed . . . immediately" of Liuzza's arrival with

Sepulveda. An understanding about the need for murder would have been reached with the El Paso conspirators during an international phone call.

There is no evidence in the record of such a telephone call, though that one was likely made is logical. We need not decide if such speculation suffices, as the evidence was sufficient to sustain the conviction without the phone-call theory. Substantial, if circumstantial, evidence exists that if there was a plan to murder Sepulveda, his arrival in El Paso with his mother would have required consideration immediately to be given as to her fate. One of the two alleged conspirators who was in El Paso, Esaul Guerrero, while not indicted for the murder in the final version of the indictment, was Mario Marquez's stepson and was indicted for drug activity with the Organization. Co-conspirators need not be identified in the indictment. *United States v. Thomas,* 348 F.3d 78, 82-84 (5th Cir. 2003). Jurors could have found that, while in El Paso, Marquez-Ramos did agree with Guerrero to kill Liuzza in Mexico, satisfying the element of the offense that the conspiracy be formed with someone in this country.

The closely related question is whether the jury could have found a conspiracy to kill Liuzza at all. Given the evidence that Sepulveda owed Mario Maruqez [sic] a large sum of money, the evidence regarding Marquez-Ramos's and the Organization's tendency towards violence and murder as management tools, and the eventual fate of Liuzza (and near-fate of Sepulveda), a reasonable jury could find

that the invitation to Juarez was a ruse to kill Sepulveda. Then, the jury could have inferred that plan would have needed to include someone Sepulveda brought with him. There was evidence that Sepulveda had brought his mother on such trips in the past, so her arrival may not have been entirely unanticipated. At least it was reasonable for jurors to conclude that the specific plan to kill Liuzza was not finalized, because it could not have been, until she arrived in El Paso.

Next, if Marquez-Ramos and Guerrero commenced their conspiracy to kill Liuzza when they saw her arrive with Sepulveda, the packing of the cash into Sepulveda's vehicle in El Paso was an overt act in furtherance of the conspiracy. Any encouragement to Sepulveda and his mother to continue on to Juarez, any maintaining of the ruse by act or word, would also have been overt acts.

Finally, Marquez-Ramos's argument that the government failed to prove the "choking and beating" portion of the indictment is unpersuasive. What this argument involves is a dispute about the "manner and means" by which the murder was shown to have occurred. The government may even allege that the "means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means." Fed. R. Crim. P. 7(c)(1). Because stating the manner and means is not necessary indictment language, what is alleged on that point is not essential. A "constructive amendment" of an indictment "occurs when the jury is

permitted to convict the defendant upon a factual basis that effectively modifies an essential element of the offense charged." *United States v. Adams,* 778 F.2d 1117, 1123 (5th Cir. 1985). Marquez-Ramos does not explain how the asserted difference between the indictment and the proof offered at trial modified an element of the offense, so what happened here was at most a "variance," not a constructive amendment. *Id.; United States v. Dentler,* 492 F.3d 306, 313 (5th Cir. 2007).

In any event, we discern no error. A reasonable jury could have concluded that Liuzza was beaten based on Sepulveda's testimony that he saw one of the assailants entering the house with a "wooden handle," that another man was on top of Liuzza with an object in his hand, and, perhaps most significantly, that an axe handle and stained piece of carpet were recovered from the house by Mexican authorities, and tested positive for Liuzza's DNA.

We affirm Marquez-Ramos's conviction for conspiracy to kill Maria Elida Liuzza in a foreign country.

2. Evidence Against Marquez-Ramos on Drug Counts

Marquez-Ramos argues that the evidence was insufficient to convict him on three of the four drug counts – the two conspiracy counts and the substantive possession with intent to distribute count. We also address a slightly different challenge

Marquez-Ramos raises with respect to his Section 959 conviction.

With respect to the conspiracy counts, there was testimony that Marquez-Ramos was a high-ranking officer who "was in charge of the money" for the Organization. One witness had seen the Organization import "a little under a ton" of marijuana on at least ten separate occasions. There were multiple seizures of marijuana at the border of 150-180 pounds. Almost four tons of marijuana was being moved through a Mexican house and drug depot known as "The Castle" at any given time. In El Paso, between 1000 and 1500 pounds of marijuana were shipped out on a daily basis for distribution within the United States. Marquez-Ramos told Sepulveda that, while Mario Marquez was in jail, he imported and exported drugs for the Organization. On another occasion, he said he "controlled a lot of import and exports of the drugs coming in from Mexico to the United States." Mario Marquez told cash smugglers that they could deliver to Marquez – Ramos rather than to him when he was not home. Marquez-Ramos once gave Sepulveda $300,000 in cash to take back to Mexico, and once helped carry at least $1.3 million to a Mexican bank for deposit. The testimony about Marquez-Ramos's violent "enforcer" role on behalf of the Organization would have been evidence the jury could have taken into account concerning his involvement in the conspiracies. Finally, the government introduced evidence that a "drug ledger" at The Castle contained multiple entries in Marquez-Ramos's handwriting.

A reasonable jury could have found Marquez-Ramos guilty of the two conspiracy counts.

The possession with intent to distribute count arose when a police officer observed Marquez-Ramos and others buying what he thought were likely to be drug packaging materials at a store in El Paso. The officer followed the group on a circuitous route back to a house. Later, when Marquez-Ramos left in a white van, the police stopped him. Apparently unaware of the surveillance, Marquez-Ramos lied about where he had been. At the house, officers detected the odor of unburnt marijuana and discovered just under 1,000 pounds of marijuana. A subsequent investigation revealed Marquez-Ramos's fingerprint on an electric scale at the house.

Marquez-Ramos claims that the only real evidence against him was the fingerprint, and invokes what he calls the "fingerprint only doctrine" as requiring a finding that the evidence was insufficient. *See United States v. Lonsdale,* 577 F.2d 923, 926 (5th Cir. 1978); *United States v. Stephenson,* 474 F.2d 1353, 1354-55 (5th Cir. 1973). If any such doctrine ever existed, it no longer does, since both cases cited by Marquez-Ramos were decided under a former rule applying a now-abandoned standard of review for convictions based solely on circumstantial evidence. The two cases are no longer good law for that reason. *Gibson v. Collins,* 947 F.2d 780, 782 (5th Cir. 1991). Regardless, here there was considerably more evidence than Marquez-Ramos's fingerprint alone, as our recounting of the circumstances leading the police

to the house indicates. A reasonable jury could have found him guilty on this count.

We now examine the evidence on Marquez-Ramos's distributing marijuana in Mexico knowing it would be unlawfully imported into the United States. *See* 21 U.S.C. § 959. Marquez-Ramos argues that venue in the Western District of Texas was improper, because the government failed to prove that Marquez reentered the United States at the same place as the marijuana entered the country. The statute, however, states only that a defendant is to be tried where he or she enters the United States; it says nothing about the entry point of the controlled substance. *Id.* § 959(c). Marquez-Ramos does not dispute that he entered the United States at El Paso, which is in the Western District of Texas. Accordingly, this argument lacks merit.

3. Marquez-Ramos's Fourth and Fifth Amendment Claims

Marquez-Ramos argues that evidence seized in Mexico from the yellow and green house and The Castle should be suppressed, and that he was entitled to a mistrial since some of it had already been presented to the jury before he could have known it was illegally obtained. This evidence included, from The Castle, large quantities of marijuana, a "drug ledger" with Marquez-Ramos's name in it, and firearms. Recovered from the yellow and green house was evidence involving Liuzza's murder, including

her driver's license, a blood-stained axe handle and carpet that tested positive for her DNA, and identification belonging to Marquez-Ramos. At one point Marquez-Ramos made both Fourth and Fifth Amendment arguments for suppression. At oral argument before this court, his counsel explicitly disclaimed reliance on the Fourth Amendment. Thus, we review only for a Fifth Amendment due process violation.

In considering the denial of a suppression motion, we review factual findings for clear error and constitutional conclusions *de novo*. *United States v. Troop*, 514 F.3d 405, 409 (5th Cir. 2008). The government argues that Marquez-Ramos waited too long before objecting to the introduction of the evidence, thus subjecting his claim to plain error review. We need not decide the question, as the outcome is clear under either standard.

The factual basis for this claim is Sepulveda's trial testimony, which Marquez-Ramos claims shows American law enforcement agents sat idly by while Mexican agents encouraged Sepulveda to lie and exaggerate his story in order to obtain Mexican search warrants.

Marquez-Ramos's due process argument relies primarily on a precedent from this court. We found that due process was violated when an IRS agent committed a deliberate deception by giving a literally true but misleading answer to a question designed to discover whether an investigation was being

undertaken for criminal purposes. *United States v. Tweel,* 550 F.2d 297, 299 (5th Cir. 1977). Notably, *Tweel* relied on a case which stated that an "'affirmative misrepresentation'" *by an agent* must be shown, by a clear and convincing standard of proof, in order to demonstrate that the government acted impermissibly. *Id.* (quoting *United States v. Prudden,* 424 F.2d 1021, 1033 (5th Cir. 1970)). Here, Marquez-Ramos does not allege that agents of this country made any representations whatsoever, much less a misrepresentation. At best, his evidence is that they sat by while Mexican authorities induced a witness to make false statements for use within the Mexican judicial system.

Substantive due process may forbid obtaining a conviction based on law enforcement conduct that "shocks the conscience," when the conduct is "brutal and offensive to human dignity" and is among the "most egregious official conduct." *Stokes v. Gann,* 498 F.3d 483, 485 (5th Cir. 2007) (citation omitted). Even taking as true Marquez-Ramos's allegation that American law enforcement agents were aware that their Mexican counterparts were inducing a witness to lie in order to obtain a Mexican search warrant, that conduct does not sink to the required depths. We find no error in the denial of the motion to suppress.

4. Marquez-Ramos's Limiting Instruction Issue

Marquez-Ramos took the stand to testify in his own defense. The district court granted his motion to provide testimony, and thus be cross-examined, only on the conspiracy to kill charge. The district court then told the jury that they should "draw no inference whatsoever" from Marquez-Ramos's "election not to testify as to the other counts."

Before entering into the precise fray between the parties on this issue, we find that the district judge's order was not a proper limit on the examination even of a defendant. "Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination." Fed. R. Evid. 611(b). A criminal defendant who testifies waives the privilege against self-incrimination to the extent of relevant cross-examination. *See Johnson v. United States*, 318 U.S. 189, 195 (1943). In that dated but still authoritative opinion, the Supreme Court quoted Professor Wigmore: a defendant's "voluntary offer of testimony upon any fact is a waiver as to all other relevant facts, because of the necessary connection between all." *Id.* (quoting 8 WIGMORE, EVIDENCE § 2276(2) (3d ed.1940)). Once a defendant testified voluntarily, he "waived his fifth amendment right and became obligated, as any other witness, to answer all relevant questions." *United States v. Harper,* 802 F.2d 115, 119

(5th Cir. 1986) (quoting *United States v. Brannon,* 546 F.2d 1242, 1246 (5th Cir. 1977)). The place at which the district judge drew his line for cross-examination, namely, between counts of the indictment, was invalid. The proper line is between what on cross-examination is relevant and irrelevant to the scope of the direct examination.

The government does not here challenge the limitation of its examination. It is this defendant who alleges that another aspect of the district court's actions was prejudicial. Marquez-Ramos claims that the district court's instructions to jurors not to draw any inferences was error and entitled him to a mistrial. The argument is that the comment improperly drew attention to his decision not to testify on the other counts. When the defendant raises an issue such as this at trial, the standard of appellate review for the denial of a mistrial is one of an abuse of discretion. *United States v. Akpan,* 407 F.3d 360, 366 (5th Cir. 2005).

We find no error, as the kind of comment made by the district court has been endorsed by the Supreme Court. *Lakeside v. Oregon,* 435 U.S. 333, 338-39 (1978). While it is impermissible to comment adversely on a defendant's silence, a "cautionary instruction" informing jurors not to draw an adverse inference from a defendant's failure to testify is permissible. *Id.* The unusual events in this trial that underlay the comment do not change the validity of it. There was no abuse of discretion in failing to grant a new trial.

5. Marquez-Ramos's Sentencing Issue

Marquez-Ramos next disputes a sentencing enhancement. The district court found Marquez-Ramos to be "an organizer or a leader of a criminal activity that involved five or more participants." *See* U.S.S.G § 3B1.1(a). This increased his Guidelines range by four levels.

Marquez-Ramos argues that he had no decision-making authority and recruited no accomplices. He also alleges that the government did not have evidence of the size of his "share" of the Organization. There was evidence, though, that Marquez-Ramos had major responsibilities on the financial side of the Organization, overseeing the disposition of hundreds of thousands of dollars in cash at a time. There was testimony that he largely ran the Organization while Mario Marquez was in prison during much of the 1990s. Marquez-Ramos was in charge of the group arrested after leaving the El Paso "stash house" during the incident that led to the possession with intent to distribute conviction. Finally, there was testimony pointing to his role as an enforcer for the Organization.

Given this testimony, and the emphasis in the Guideline application note on the "exercise of decision making authority," "nature of participation," "degree of participation in planning or organizing the offense," "nature and scope of the illegal activity," and "degree of authority exercised over others," it was not clear error for the district court to have found that

Marquez-Ramos met the criteria for the leadership enhancement. We affirm Marquez-Ramos's sentence.

III. CONCLUSION

For the foregoing reasons, the convictions and sentences of the three defendants are AFFIRMED.

UNITED STATES DISTRICT COURT
Western District of Texas
EL PASO DIVISION

UNITED STATES OF AMERICA
v.
DIANA MARQUEZ
Defendant.

Case Number
EP-05-CR-755-DB(7)
USM Number 60222-180

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

(Filed Apr. 27, 2007)

The defendant, DIANA MARQUEZ, was represented by Ray Velarde.

The defendant was found guilty on Counts 1, 2, 7, 9, 10 of the Third Superseding Indictment by a jury verdict on September 20, 2006 after a plea of not guilty. Accordingly, the defendant is adjudged guilty of such Counts, involving the following offenses:

Title & Section	Nature of Offense	Offense Ended	Count(s)
21 U.S.C. 841 and 846	Conspiring to possess with intent to distribute a quantity of marijuana > 1000 kilograms	July 2005	1
21 U.S.C. 952, 960 and 963	Conspiring to import a quantity of marijuana > 1000 kilograms	July 2005	2

18 U.S.C. 1956	Conspiring to launder monetary instruments	July 2005	7
18 U.S.C. 1957	Engaging in monetary transactions in property derived from a specific unlawful activity	7-26-05	9
18 U.S.C. 1957	Engaging in monetary transactions in property derived from a specific unlawful activity	4-18-05	10

As pronounced on April 26, 2007, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the Ccurt and United States Attorney of any material change in the defendant's economic circumstances.

Signed this the 27th day of April, 2007.

/s/ David Briones
DAVID BRIONES
United States District Judge

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 360 months on each of Counts One (1), Two (2), 240 months on Count Seven (7), 120 months on each of Counts Nine (9) and Ten (10) to be served concurrently.

The Court makes the following recommendations to the Bureau of Prisons:

That the defendant serve this sentence at F. M.C., Carswell, Texas, and that the defendant receive medical treatment for her fractured knee at the designated institution, or in the alternative, a facility where the defendant is allowed to participate in the Comprehensive Drug Treatment Program at the designated institution.

The defendant shall remain in custody pending service of sentence.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

_____
United States Marshal

By _____
Deputy Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 5 years on each of Counts One (1), and Two (2), 3 years on each of Counts Seven (7), Nine (9) and Ten (10) to be served concurrently.

While on supervised release, the defendant shall comply with the mandatory, standard and if applicable, the special conditions that have been adopted by this Court as set forth on pages 4 and 5 of this judgment.

CONDITIONS OF SUPERVISION

Mandatory Conditions:

1) The defendant shall not commit another federal, state, or local crime.

2) The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

3) In supervised release cases only, the defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from custody of the Bureau of Prisons.

4) If convicted of a felony, the defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

5) The defendant shall cooperate in the collection of DNA as directed by the probation officer if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. § 1413a).

6) If convicted of a sexual offense as described in 18 U.S.C. § 4042(c)(4), the defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer.

7) If convicted of a domestic violence crime as defined in 18 U.S.C. § 3561(b), the defendant shall participate in an approved program for domestic violence.

8) If the judgment imposes a fine or restitution, it is a condition of supervision that the defendant pay in accordance with the Schedule of Payments sheet of the judgment.

Standard Conditions:

1) The defendant shall not leave the judicial district without permission of the court or probation officer.

2) The defendant shall report to the Probation Officer and shall submit a truthful and complete written report within the first five days of each month.

3) The defendant shall answer truthfully all inquiries by the Probation Officer and follow the instructions of the Probation Officer.

4) The defendant shall support his or her dependents and meet other family responsibilities.

5) The defendant shall work regularly at a lawful occupation unless excused by the Probation Officer for schooling, training or other acceptable reasons.

6) The defendant shall notify the Probation Officer at least ten days prior to any change in residence or employment.

7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substance, except as prescribed by a physician.

8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.

9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the Probation Officer.

10) The defendant shall permit a Probation Officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the Probation Officer.

11) The defendant shall notify the Probation Officer within seventy-two hours of being arrested or questioned by a law enforcement officer.

12) The defendant shall not enter into any agreement to act as an informer or special agent of a

law enforcement agency without the permission of the Court.

13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

14) If convicted of a sexual offense as described in 18 U.S.C. § 4042(c)(4), or has a prior conviction of a State or local offense that would have been an offense as described in 18 U.S.C. § 4042(c)(4) if a circumstance giving rise to Federal jurisdiction had existed, the defendant shall participate in a sex offender treatment program approved by the probation officer. The defendant shall abide by all program rules, requirements and conditions of the sex offender treatment program, including submission to polygraph testing, to determine if the defendant is in compliance with the conditions of release. The defendant may be required to contribute to the cost of the services rendered (copayment) in an amount to be determined by the probation officer, based on the defendant's ability to pay.

15) The defendant shall submit to an evaluation for substance abuse or dependency treatment as directed by the probation officer, and if deemed necessary by the probation officer, the defendant shall participate in a program approved by the probation officer for treatment of narcotic addiction or drug or alcohol dependency which may include

testing and examination to determine if the defendant has reverted to the use of drugs or alcohol. The defendant may be required to contribute to the cost of the services rendered (copayment) in an amount to be determined by the probation officer, based upon the defendant's ability to pay.

16) The defendant shall submit to an evaluation for mental health counseling as directed by the probation officer, and if deemed necessary by the probation officer, the defendant shall participate in a mental health program approved by the probation officer. The defendant may be required to contribute to the cost of the services rendered (copayment) in an amount to be determined by the probation officer, based upon the defendant's ability to pay.

17) If the defendant is excluded, deported, or removed upon release from imprisonment, the term of supervised release shall be a non-reporting term of supervised release. The defendant shall not illegally re-enter the United States. If the defendant lawfully re-enters the United States during the term of supervised release, the defendant shall immediately report in person to the nearest U.S. Probation Office.

18) If the judgment imposes other criminal monetary penalties, it is a condition of supervision that the defendant pay such penalties in accordance with the Schedule of Payments sheet of the judgment.

19) If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant

shall provide the probation officer access to any requested financial information.

20) If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall not incur any new credit charges or open additional lines of credit without the approval of the probation officer unless the defendant is in compliance with the payment schedule.

The Court further adopts such of the following special conditions applied to the supervised person by the judge at the time of sentencing:

1) **COMMUNITY CONFINEMENT:** The defendant shall reside in a Community Corrections Center for a period of 0 months to commence on _____. Further, once employed, the defendant shall pay 25% of his/her weekly gross income for his/her subsistence as long as that amount does not exceed the daily contract rate.

2) **HOME DETENTION:** The defendant shall participate in the Home Confinement Program for a period of 0 days/months. During this time the defendant shall remain at his/her place of residence except for employment and other activities approved in advance by the probation officer. The defendant shall maintain a telephone at his/her place of residence without "call forwarding," a "modem," "caller ID," "call waiting," or portable cordless telephones for the above period. At the direction of the probation officer, the defendant shall wear an electronic

monitoring device and follow electronic monitoring procedures specified by the probation officer. The court further orders that the defendant shall pay for the costs of Home Confinement, as directed by the probation officer.

3) **COMMUNITY SERVICE:** The defendant shall perform 0 hours of community service work without pay, at a location approved by the probation officer, at a minimum rate of four hours per week, to be completed during the first ___ months of supervision.

CRIMINAL MONETARY PENALTIES/SCHEDULE

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth. Unless the Court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. Criminal Monetary Penalties, except those payments made through Federal Bureau of Prisons' Inmate Financial Responsibility Program shall be paid through the Clerk, United States District Court, 511 E. San Antonio Street, Room 219 El Paso, Texas 79901.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

	Total Assessment	Fine	Restitution
TOTAL:	$500.00	$0	$0

Special Assessment

It is ordered that the defendant shall pay to the United States a special assessment of $500.00. Payment of this sum shall begin immediately.

Fine

The fine is waived because of the defendant's inability to pay.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column above. However, pursuant to 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. §3614.

The defendant shall pay interest on any fine or restitution of more than $2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. §3612(f). All payment options may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. §3612(g).

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution,

(6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

UNITED STATES DISTRICT COURT
Western District of Texas
EL PASO DIVISION

UNITED STATES OF AMERICA

v.

HECTOR LEONEL MARQUEZ-RAMOS

Defendant.

Case Number EP-05-CR-755-DB(1)

USM Number 55813-180

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

(Filed Apr. 16, 2007)

The defendant, HECTOR LEONEL MARQUEZ-RAMOS, was represented by Joseph Sib Abraham, Jr..

The defendant was found guilty on Counts 1, 2, 3, 4, and 5 by a jury verdict on September 20, 2006 after a plea of not guilty. Accordingly, the defendant is adjudged guilty of such Counts, involving the following offenses:

Title & Section	Nature of Offense	Offense Ended	Count(s)
21 U.S.C. 841 and 846	Conspiring to possess with intent to distribute a quantity of marijuana > 1000 kilograms	July 2005	1

21 U.S.C. 952, 960 and 963	Conspiring to import a quantity of marijuana > 1000 kilograms	July 2005	2
21 U.S.C. 841	Possessing with intent to distribute a quantity of marijuana >100 kilograms	7-22-04	3
21 U.S.C. 959	Distributing for the purpose of unlawful importation of marijuana >1000 kilograms	July 2005	4
18 U.S.C. 956	Conspiring to kill in a foreign country	2-15-05	5

As pronounced on April 13, 2007, the defendant is sentenced as provided in pages 2 through 7 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the Court and United States Attorney of any material change in the defendant's economic circumstances.

Signed this the 16th day of April, 2007.

/s/ David Briones
DAVID BRIONES
United States District Judge

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term life imprisonment on each of Counts One (1), Two (2), Four (4), and Five (5); and 40 years on Count Three (3) to be served concurrently.

The Court makes the following recommendations to the Bureau of Prisons:

That the defendant serve this sentence at a facility as close to El Paso, Texas as possible.

The defendant shall remain in custody pending service of sentence.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

_____
United States Marshal

By _____
Deputy Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on non-reporting supervised release for a term of 5 years on each of Counts One (1), Two (2), Three (3), Four (4) and Five (5) to be served concurrently.

While on supervised release, the defendant shall comply with the mandatory, standard and if applicable, the special conditions that have been adopted by this Court as set forth on pages 4 and 5 of this judgment and shall comply with the following additional condition:

X The mandatory drug testing provision of the Violent Crime Control and Law Enforcement Act of 1994 is suspended.

CONDITIONS OF SUPERVISION

Mandatory Conditions:

1) The defendant shall not commit another federal, state, or local crime.

2) The defendant shall not unlawfully possess a controlled substance. The defendant shal refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

3) In supervised release cases only, the defendant must report to the probation office in the district to which the defendant is released wthin 72

hours of release from custody of the Bureau of Prisons.

4) If convicted of a felony, the defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

5) The defendant shall cooperate in the collection of DNA as directed by the probation officer if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. § 1413a).

6) If convicted of a sexual offense as described in 18 U.S.C. § 4042(c)(4), the defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer.

7) If convicted of a domestic violence crime as defined in 18 U.S.C. § 3561(b), the defendant shall participate in an approved program for domestic violence.

8) If the judgment imposes a fine or restitution, it is a condition of supervision that the defendant pay in accordance with the Schedule of Payments sheet of the judgment.

Standard Conditions:

1) The defendant shall not leave the judicial district without permission of the court or probation officer.

2) The defendant shall report to the Probation Officer and shall submit a truthful and complete

written report within the first five days of each month.

3) The defendant shall answer truthfully all inquiries by the Probation Officer and follow the instructions of the Probation Officer.

4) The defendant shall support his or her dependents and meet other family responsibilities.

5) The defendant shall work regularly at a lawful occupation unless excused by the Probation Officer for schooling, training or other acceptable reasons.

6) The defendant shall notify the Probation Officer at least ten days prior to any change in residence or employment.

7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substance, except as prescribed by a physician.

8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.

9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the Probation Officer.

10) The defendant shall permit a Probation Officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the Probation Officer.

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The Court further adopts such of the following special conditions applied to the supervised person by the judge at the time of sentencing:

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forwarding," a "modem," "caller ID," "call waiting," or portable cordless telephones for the above period. At the direction of the probation officer, the defendant shall wear an electronic monitoring device and follow electronic monitoring procedures specified by the probation officer. The court further orders that the defendant shall pay for the costs of Home Confinement, as directed by the probation officer.

3) **COMMUNITY SERVICE:** The defendant shall perform 0 hours of community service work without pay, at a location approved by the probation officer, at a minimum rate of four hours per week, to be completed during the first ___ months of supervision.

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The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

	Total Assessment	Fine	Restitution
TOTAL:	$500.00	$50,000.00	$0

Special Assessment

It is ordered that the defendant shall pay to the United States a special assessment of $500.00. Payment of this sum shall begin immediately.

Fine

The defendant shall pay a fine of $50,000.00. Payment of this sum shall begin immediately. The fine is below guideline range because of the defendant's inability to pay a fine within the guideline range. This amount is the total of the fines imposed on individual counts, as follcws: $10,000.00 on Count 1, $10,000.00 on Count 2, $10,000.00 on Count 3, $10,000.00 on Count 4 and $10,000.00 on Count 5.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column above. However, pursuant to 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. §3614.

The defendant shall pay interest on any fine or restitution of more than $2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. §3612(f). All payment options may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. §3612(g).

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

FORFEITURE

The defendant is ordered to forfeit the following property to the United States:

1. 11517 Lake Tana, El Paso, Texas
2. A $2,985,083.96 Personal Money Judgment